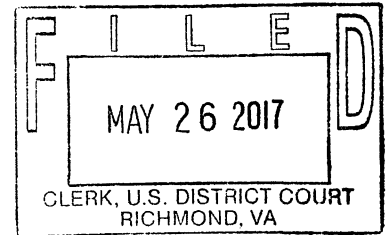


IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division



UNITED STATES OF AMERICA

v.

Criminal No. 3:07CR164

DAVID ISAAC WAY,

Petitioner.

MEMORANDUM OPINION

David Isaac Way, a federal inmate proceeding with counsel, submitted this motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. Way asserted that, in light of the Supreme Court's recent decision in Johnson v. United States, 135 S. Ct. 2551 (2015), his enhanced sentence under the United States Sentencing Guidelines ("USSG") as a career offender is unconstitutional.<sup>1</sup> "Recently, the Supreme Court concluded that the Guidelines are not subject to a vagueness challenge under

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<sup>1</sup> As the Supreme Court has noted,

[u]nder the Armed Career Criminal Act ["ACCA"] of 1984, a defendant convicted of being a felon in possession of a firearm faces more severe punishment if he has three or more previous convictions for a "violent felony," a term defined to include any felony that "involves conduct that presents a serious potential risk of physical injury to another."

Johnson, 135 S. Ct. at 2555 (emphasis added) (quoting 18 U.S.C. § 924(e)(2)(B)). This part of the definition of violent felony "ha[s] come to be known as the Act's residual clause." Id. The Johnson Court held "that imposing an increased sentence under the residual clause of the [ACCA] violates the Constitution's guarantee of due process." Id. at 2563.

the Due Process Clause. . . . Johnson's vagueness holding does not apply to the residual clause in [USSG] § 4B1.2(a)(2)." United States v. Lee, No. 15-6099, --- F.3d ----, 2017 WL 1476145, at \*2 (4th Cir. Apr. 25, 2017) (citation omitted). Thus, Way's claim lacks merit. Accordingly, the Government's Motion to Dismiss (ECF No. 147) will be granted. The § 2255 Motion (ECF No. 141) will be denied. The action will be dismissed, and the Court will deny a certificate of appealability.

The Clerk is directed to send a copy of this Memorandum Opinion to Way and counsel of record.

It is so ORDERED.

Date: May 24, 2017  
Richmond, Virginia

\_\_\_\_\_/s/ REP  
Robert E. Payne  
Senior United States District Judge